

**STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
300 Capitol Mall, Suite 1700
Sacramento, California 95814**

**File No. ER01018366
December 14, 2001**

**SUBJECT: PROGRAM FOR THE INVESTIGATION AND PROSECUTION
OF AUTOMOBILE INSURANCE FRAUD**

INITIAL STATEMENT OF REASONS

The Insurance Commissioner of the State of California (Commissioner) proposes to amend Subchapter 9, Article 5, Sections 2698.70 and 2698.71 of Title 10, Chapter 5 of the California Code of Regulations (CCR) regarding the program for investigation and prosecution of organized automobile insurance fraud. The purpose of the proposed adoption is to implement, interpret and make specific the provisions of the California Insurance Code (CIC) sections 1874.8 and 1871.81 which requires the Commissioner to assess and distribute funds for the purpose of investigating and prosecuting organized automobile insurance fraud cases.

DESCRIPTION OF THE PUBLIC PROBLEM

The Insurance Commissioner of the State of California (Commissioner) proposes to amend Subchapter 9, Article 5, Sections 2698.70 and 2698.71, Title 10, Chapter 5 of the CCR regarding the program for investigation and prosecution of organized automobile fraud. The purpose of the proposed amendment is to implement, interpret and make specific the provisions of the California Insurance Code (CIC) sections 1874.8 and 1874.81 which require the Commissioner to assess and distribute certain funds to California district attorneys for the purpose of prosecuting organized automobile fraud cases.

AB 1050, Chapter 885, Statutes of 1999, was signed by the Governor on October 9, 1999 creating the Organized Crime Prevention and Victim Protection Act of 1999. AB 1050, inter alia, added CIC 1874.8 and 1874.81 as well as modifying existing CIC section 1872.8. In adopting AB 1050, the Legislature made the following findings and declaration of purpose:

Section 1. (a) This act shall be known as the Organized Crime Prevention and Victim Prevention Act of 1999.

“(b) The Legislature finds that organized automobile fraud activity operating in the major urban centers of the state represents a significant portion of all individual fraud-related automobile insurance cases. These cases result in artificially higher insurance premiums for core urban areas and low-income areas of the state than for other areas of the state. Only a focused, coordinated effort by all appropriate agencies and organizations can effectively deal with this problem.”

CIC section 12921 requires the Commissioner to enforce the provisions of the Insurance Code and other laws regulating the business of insurance in the State of California. CIC section 1874.8 requires the Commissioner to establish an annual assessment on each automobile for which a policy of insurance has been issued in order to fund the activity of the Commissioner, the California Highway Patrol and from 3 to 10 county District Attorney’s Offices.

The proposed amendments are necessary to implement, interpret and make specific the provisions of CIC sections 1874.8 and 1874.81 and to conform the text of title 10, CCR sections 2698.70 and 2698.71 with the identical provisions of a related assessment program which were recently amended as part of RH-394 (title 10, CCR sections 2698.61 and 2698.62). The proposed action would specify the criteria for the calculation and payment of the annual assessment as well as specify that the Commissioner may conform the overall amount of the assessment to be collected so as not to exceed the maximum amount of program expenditures authorized by the annual budget.

STATEMENT OF SPECIFIC PURPOSE

The specific purpose of each adoption, and the rationale for the determination that each adoption is reasonably necessary to carry out the purpose for which it is proposed, together with a description of the public problem, administrative requirement, or other condition or circumstance that each adoption is intended to address, is as follows:

Section 2698.70 Definitions

Amendments to this section would define and make clear the terms utilized in the grant program and to conform the terms of these regulations with those promulgated to implement CIC section 1872.8 (Title 10, CCR, sections 2698.61.)

Subsection (p) is amended to define the term “vehicle” as having the same meaning as that term is defined in Vehicle Code Section 670 and expressly stating that the term includes references to commercial and non-commercial vehicles.

Rationale for Necessity: Subsection (p) was added to make clear and specific that the meaning of vehicle, as used in this article, which is otherwise defined differently through other areas of statutory and case law includes both commercial and non-commercial vehicles.

Section 2698.71 Annual Fee

Specific Purpose: Existing subsection (a) is deleted and replaced with a new subsection (a) which maintains the existing assessment amount of one-half-dollar (\$.50) and provides a clear and specific method for the assessment as set forth in statute. The existing subsection provides that insurers may not prorate the assessment either in the amount assessed or the payment. This amendment would allow insurers to “annualize” their payment of the assessment over the period of the year in quarterly increments. This modification deleted the express prohibitions against prorating of the amount and the payment.

Subsection (b) and (c) are amended to specify a methodology for calculating the assessment that will conform to the amendment to the assessment methodology set forth in subsection (a) and to conform verbatim to the recent amendment to title 10, CCR section 2698.62, subsection (b).

Subsection (d) is amended to specify that the date of delinquency in payment of the assessment runs from the date of the “invoice” rather than the date of mailing of the assessment notice.

Subsection (e) is amended to allow the Commissioner, within the limits otherwise applicable under Insurance Code 1874.8 and 1874.81 and this section, to conform the overall amount to be collected through this assessment so as not to exceed the maximum amount of program expenditures authorized by the annual State budget act.

Rationale for Necessity: CIC Sections 1874.8 and 1874.81 and existing title 10, CCR, 2698.71, require insurers doing business in this state to pay an annual assessment of one-half-dollar for each vehicle insured under an insurance policy it issues in this state in order to fund the investigation and prosecution of fraudulent automobile insurance claims and economic automobile theft. Sections 1874.8 and 1874.81 do not specify the exact method to be used to establish and collect the assessment.

A similar but distinct automobile insurance fraud assessment program (established under CIC 1872.8 and title 10 CCR 2698.60 et seq.) already existed when AB 1050 was passed by the Legislature in 1999. Because the regulations under that program had resulted in unintended interpretations being used by some insurers to calculate and pay assessment, the CDI drafted the regulation under the new program with the intent to create a more specific and uniform assessment calculation and collection methodology (ER-38).

Subsequent to the adoption of those regulations the CDI proceeded to make conforming amendments to the pre-existing regulations (RH-394). After public comment, it was determined that a more fair and accurate manner of assessment would be to allow insurers to pay the assessment on an annualized basis. Because these further amendments would result in a limited amount of prorating where the vehicle is not insured during every quarter of the year, subsection (a) was also amended to delete the existing express prohibition against the prorating of the amount or payment of the assessment.

Because of the related nature of the assessment programs established under CIC 1872.8 and 1874.8, a uniform methodology for calculating and paying the assessment is advantageous for several reasons including efficiency and ease of administration by both insurers and CDI. Providing a uniform methodology for the invoicing and calculation of the assessment prevents incurring of unnecessary expense otherwise needed to operate disparate assessment procedures.

Subsection (b) was amended to conform to the amendments being proposed in subsection (a) and to provide a specific and clear method for insurers to calculate and pay the assessments required under this section. This amendment was needed to delete existing proposed language that would require 100 percent of the assessment to be paid for each vehicle as it came under a policy and to add text that would make specific the method to be used by insurers calculating and paying the assessment under this section.

Subsection (c) (1) is necessary to prevent an interpretation of the regulations which, while allowing for the broadest range of assessment consistent with the enabling statute, would preclude the same insurer from being assessed more than once for the same vehicle during the same quarter.

Section 1872.8 does not provide a time period within which the assessment must be paid. This new section establishes a delinquency period and an appropriate sanction for late payment. CIC 12995 is used by the department to assess late charges in other areas. Subsection (d) is necessary to make specific the time period for submission of assessments and provide sanction for delinquency. The existing text provides that period for determining delinquency commenced from the date of mailing of the “assessment.” In order to avoid a possible ambiguity concerning what the “assessment” is, and to conform to existing text and practice in similar assessments and billings by the CDI, it is necessary to use the term “invoice”.

Subsection (e) was deemed necessary to avoid an unanticipated accumulation of assessment revenue that can not be expended under the program due during a given fiscal year. No other available method has been ascertained that would more effectively respond to this concern.

IDENTIFICATION OF STUDIES

The Commissioner has not relied on any technical, theoretical, or empirical study or report, or similar document, proposing the adoption of these regulations. However, the Commissioner has received advice from members of the insurance industry and the California District Attorney’s Association regarding certain language. Furthermore, the Commissioner has relied on experience in administering this and related grant programs.

SPECIFIC TECHNOLOGIES OR EQUIPMENT

Adoption of these regulations as proposed would not mandate the use of specific technologies or equipment.

ALTERNATIVES

These regulations are being amended to make more specific and clear both the provisions of the enabling statute and existing regulatory scheme as well as to conform the provisions of this assessment program to a related but distinct existing assessment program. No other alternatives are considered available to accomplish these goals.

CALIFORNIA DEPARTMENT OF INSURANCE

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